***HON'BLE SRI JUSTICE P.S. NARAYANA**

+WRIT PETITION NO.23162 of 2006

%13-11-2006
#M/s. Mukarram Jah Trust for Education and Learning having its office at Purani Haveli, Hyderabad-2, represented by its Secretary Kamaluddin Ali Khan. .. PETITIONER

Versus

$The Assistant City Planner, Town Planning Section, Circle-II, Municipal Corporation of Hyderabad, Sardar Mahal, Charminar, Hyderabad and another. .. RESPONDENTS

< GIST:

> HEAD NOTE:

!Counsel for Petitioner**: Sri R.Raghunandan.**

^Counsel for Respondents**: Sri Ghanta Rama Rao.**

? Cases referred
NIL

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.23162 of 2006

DATED 13.11.2006

Between:
M/s. Mukarram Jah Trust for Education and Learning having its office at Purani Haveli, Hyderabad-2, represented by its Secretary Kamaluddin Ali Khan. .. PETITIONER

Versus

The Assistant City Planner, Town Planning Section, Circle-II, Municipal Corporation of Hyderabad, Sardar Mahal, Charminar, Hyderabad and another. .. RESPONDENTS

WRIT PETITION NO.23162 of 2006

ORDER:

The matter is coming up for admission today. Sri Ghanta Rama Rao, learned Standing Counsel representing Municipal Corporation of Hyderabad had taken notice on 8.11.2006 for the purpose of getting instructions. The learned counsel states that it is true that No Objection Certificate from revenue authorities cannot be insisted upon and the Municipal Corporation is concerned only with TSLR and not No Objection Certificate. The learned Standing Counsel also would submit that the building permit fee as required under B.B. 5.2 of 1981 had not been remitted.

2. Sri R.Raghunandan, learned counsel representing the petitioner would submit that the petitioner is prepared to comply with the remitting of the building permit fee as required under B.B. 5.2 of 1981. The learned counsel also would submit that TSLR is not the only criterion and the other documents also may have to be considered, but even otherwise the petitioner is prepared to produce the TSLR as required.

3. The Writ Petition is filed praying for a Writ of Mandamus declaring the action of the respondents in insisting for production of No Objection Certificate from the Collector and rejecting the building application of the petitioner dated 29.8.2006 is arbitrary, high-handed, without jurisdiction and violative of Article 14 of the Constitution of India and direct the respondents to process the application of the petitioner dated 29.8.2006 strictly in accordance with the building regulations in force and without insisting for No Objection Certificate

from the Collector, Hyderabad and any other revenue authority and pass such other suitable orders.

4. The Secretary and Authorised Signatory of the petitioner-trust, M/s. Mukarram Jah Trust for Education and Learning has sworn to the affidavit filed in support of the Writ Petition. It was averred in paragraph 2 of the affidavit filed in support of the Writ Petition that the petitioner Trust was set up for the purpose of promoting the cause of education and more particularly in the old city of Hyderabad. The settler of the Trust was the erstwhile 8th Nizam of Hyderabad, who had donated various immovable properties to the Trust for the purpose of carrying out the objects of the Trust. As the Trust was a charitable Trust, it was registered under the provisions of the Endowments Act of 1966 on the application made by the Trust on 3.9.1976. The properties donated by the Settler were registered in the Endowments Register. One of the properties donated by the Settler was land and building situated in house bearing No.20-4-206, Himmathpura, Hyderabad, which was known as Matha-e-rikab-e-sa'adat. This is a very large extent of land which has been leased out to a Girls School and is presently occupied by the said Girls School. However, there is a large extent of open land facing the main road. The Trustees of the petitioner Trust had decided to construct malgies in this land for the purpose of generating additional income for the Trust in their meeting held on 18.8.2006. It is also stated that in pursuance of the Resolution of the Trustees, plans had been drawn up for the construction of the shops in the ground and first floor and a proposal for construction of five shops in the ground floor and five shops in the first floor, with a built up area of 248 square meters in a land area of 593 square meters was drawn up. After the plans had been drawn up, the same were submitted to the first respondent along with necessary documents, vide covering letter dated 29.8.2006 by the petitioner. The same was

received by the Town Planning Section on 5.9.2006. However, to the surprise of the petitioner, the building application was rejected by letter dated 12.9.2006 by the first respondent on the ground that No Objection Certificate was required from the Collector and that the building permit fee had not been submitted along with the building application. It is also stated that the petitioner had taken necessary building permit fee and offered to pay to the respondent, but the same was not accepted on the ground that the building application itself was not acceptable due to the absence of No Objection Certificate from the Collector, Hyderabad District. This fact was also intimated to the first respondent by the letter of the petitioner Trust dated 15.9.2006. Except the rejection letter dated 12.9.2006, the first respondent had not reviewed any of the papers submitted by the petitioner-Trust. It is also further stated that the rejection of the building application of the petitioner-Trust by the first respondent on the ground that No Objection Certificate from the Collector, Hyderabad District, has not been filed along with the building application is illegal, violative of the Building Bye-Laws of 1981 as well as the provisions of Municipal Corporation of Hyderabad Act, and without any basis in law and beyond the jurisdiction of the first respondent. It is stated that this Court has time and again held that the respondents cannot insist upon production of No Objection Certificate from the Collector, Hyderabad, for the purpose of processing the building application of various persons, who come forward for constructing house and building in the area falling within the jurisdiction of Municipal Corporation of Hyderabad. The petitioner-Trust had specifically filed the extract of Endowment Register, which clearly shows this property having been donated to the petitioner-Trust and having been entered in the Register of Endowments. The petitioner-Trust has been the owner of the property since the Settler had donated the property and has been receiving rents regularly from the Girls High School, Mojam Jahi Market, Hyderabad, for the past few

decades. The insistence of production of No Objection Certificate by the respondents is clearly not based on any provisions of Building Bye-Laws or the provisions of Municipal Corporation of Hyderabad Act, and the refusal of the first respondent to process the building application of the petitioner-Trust dated 29.8.2006 is illegal, arbitrary, without jurisdiction and violative of Article 14 of the Constitution of India.

5. The order impugned dated 12.9.2006 reads as hereunder:

"Lr.No.206/4/20/TP/C2/MCH/2006 Dt: 12.09.2006.

To
The Secretary,
Mukarram Jah Trust,
Purani Haveli,
Hyderabad.

Sir,

Sub: MCH – Circle No.2 – T.P. Section – Proposed construction of shops in Ground floor and First Floor in Pr. No.20-4-206 situated at Shalibanda, Himmathpura, Hyderabad – Refused – Intimation – Reg.

Ref: Your letter dt. 29.08.06 along with building application form dt.21.07.2006.

The building application for proposed construction of shops in ground floor and first floor in Pr. No.20-4-206 situated at Shalibanda, Himmathpura, Hyderabad, submitted by you in the reference cited have been refused on the following grounds:

1. You have submitted the building application without remitting the building permit fee as required under B.B. 5.2 of 1981, hence the building application is not legitimate and not acceptable.
2. You have not submitted the T.S.L.R./N.O.C. Certificate. As per the building Bye-Law No.4.2(v) of 1981, and condition No.2, it is required to provide Attested Xerox copy of the Revenue (Survey) issued by Mandal Surveyor with Mutation record number. Further the Government has

issued orders in Memo No.20448/M1/97-2. MA., dated 27.9.1997, to verify and make it compulsory to furnish the TS Record/Ward/Block particulars, while applying sanction for building permission.

Hence your proposal is hereby refused and plans are returned unapproved. Further you are requested not to proceed with any type of construction till permission is obtained from MCH.

Asst. City Planner,
Circle No.II, MCH".

6. The objections raised in this regard specified supra being self-explanatory, they need not be repeated. It is needless to say that No Objection Certificate from the revenue authorities is not to be insisted upon. However, in view of the submission made by the counsel for writ petitioner that the writ petitioner is prepared to comply with the remitting of the building permit fee as required under B.B. 5.2 of 1981 and also TSLR., this Court is of the considered opinion that the Writ Petition be disposed of directing the respondents to consider the building application form of the petitioner dated 21.7.2006 submitted along with the letter dated 28.9.2006 in accordance with law on condition of the petitioner remitting building permit fee as required under B.B. 5.2 of 1981 and also on submitting the TSLR. However, it is also made clear that TSLR alone cannot be the criterion and if the petitioner is able to satisfy by producing the other material, the respondents to consider the application in accordance with law on the strength of such additional material also which may be placed before the respondents in this regard. This exercise to be completed by the respondents within a period of four (04) weeks on the petitioner representing the application after duly complying with the objections raised as referred to supra.

7. With the above directions, the Writ Petition is disposed of. There shall be no order as to costs.

13.11.2006

SSR

Issue order copy in two days.

(BO)

LR COPY TO BE MARKED.